IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2985 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JAYANTIBHAI GOVINDBHAI KUNDALIYA

Versus

STATE OF GUJARAT

Appearance:

MR SK PATEL for the Petitioner.

Mr. L.B.Dabhi, AGP for respondent nos. 1 and 3.

MR HS MUNSHAW for Respondent No. 2

MR JR NANAVATI for Respondent No. 4

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 07/02/2002

ORAL JUDGEMENT

This petition has been filed for a direction to the respondent nos. 1 to 3 to grant land to

the petitioner from any available piece of land as per rules and regulations as against deduction of his land in the interest of justice.

2. The petitioner is the owner of survey no. 88 paiki of village Raiya, Ta: Rajkot within the limits of Rajkot Urban Development Authority (RUDA) which is covered under TP scheme no.1. The petitioner applied for conversion of agricultural land into non-agricultural land purpose. That was allowed in the year 1965 and NA permission was granted on 15.5.1965. The TP scheme came into existence on 3.10.1989 and that scheme was sanctioned on 28th June, 1990 and the scheme was finalised by the State Government on 30th July 1990.

3. The contention of the learned counsel for the petitioner is that the authority concerned has committed grave irregularity in preparing the dtaft town planning scheme and he showed from the table Annexure "F" that some of the land holders have been granted much more land than they originally possessed and grave injustice has been caused to the petitioner. As the petitioner's land was admeasuring 1213 sq.mtrs. and he has been allotted only 216 sq.mtrs. The authority has made deduction of 82% of the total area of the petitioner's plot. Hence, this petition has been filed for a direction to the authority concerned to grant land to the petitioner from any available piece of land as per rules and regulations as against deduction of his land. The deduction of 82% is not permissible under law. Still however, such a huge area of the plot of the petitioner's land has been deducted which is an error apparent on the face of the record. The authority has power to vary the scheme on the ground of error, irregularity or infirmity under sections 70 and 71 of the Gujarat Town Planning and Urban Development Act, 1976. Section 71 of the said Act provides that notwithstanding anything contained in section 70, a town planning scheme may at any time vary. A subsequent scheme made public and/or sanctioned in accordance with the provisions of this Act. Thus, the town planning scheme which has already been finalised, variation can be made in the subsequent scheme.

4. It is contended by the learned counsel for the respondents that after finalisation of the scheme under section 65(3) of the Act, the scheme shall have an effect as if it were enacted in this Act. The appropriate authority has no power to make any variation. No doubt, the authority can apply in writing to the State Government for variation in the scheme under section 70(2), but the State Government is required to be

satisfied that variation required is not substantial, the State Government shall publish a draft of such variation in the prescribed manner under sub-section (ii) of section 70 of the Act. As the variation claimed by the petitioner is of substantial nature, neither appropriate authority nor the State Government can make any variation in the finalised scheme. It is also contended on behalf of the respondents that the scheme was finalised on 30th July, 1990. This petition was filed in the year 1996 after about six years and on the ground of latches, the petition is not maintainable and the petitioner has not challenged the validity of the finalised scheme. As such, the petition is not maintainable and entertainable at all.

5. The learned counsel for the petitioner also submitted that at the initial stage, this Court granted interim relief in terms of para 12(C) in both parts vide order dated 5.7.1996 and on the application of the respondents, the interim reliief was modified by an order dated 29.1.1997 on the basis of the statement made by Mr. Munshaw that the final plot is 139 of the TP scheme no. 1 of village Raiya. Originally, the petitioner is interested in the area admeasuring 1213 sq.mtrs. and he also made a further statement that the area admeasuring 1213 sq.mtrs. will be kept reserved till the decision of the present petition. Accordingly the interim relief granted was modified. As such, on the basis of this order, the learned counsel for the petitioner submitted that the total area of the final plot was 5824 sq.mtrs. and out of that area, a plot admeasuring 1213 sq.mtrs. has already been reserved till the decision of this Court. Therefore, the appropriate authority can consider the claim of the petitioner as the land has already been reserved pursuant to the court's order dated 29.1.1997. If the authority considers it appropriate to allot the land to the petitioner, that can be done under the provisions of section 71 of the Act.

6. Considering the facts and circumstances of the case, this petition is being disposed of finallhy with a direction to the petitioner to file a fresh representation before the respondent no. 2 authority within a period of four weeks from today and the respondent no. 2 will pass an appropriate order after giving a reasonable opportunity of hearing to the petitioner, in accordance with the statutory provisions of law, Gujarat Town Planning and Urban Development Act, Rules and regulations thereunder or any other circular or resolution passed by the State Government and in accordance with the scheme itself; within a period of

three months thereafter. If the respondent no. 2 comes to the conclusion that the petitioner is entitled for his claim, the authority will propose variation for sanction and the State Government will pass appropriate orders thereafter within a period of three months thereof. Rule is discharged accordingly with no order as to costs. However, the interim relief granted by this Court will continue till the decision is taken by the respondent no. 2 authority.

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